BLEED THROUGH – POOR COPY

FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 7 1948
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1947.

No. 275.

LAWRENCE DYER,

Appellant,

vs.

CITY COUNCIL of the City of Beloit, Rock County, Wisconsin; A. D. TELFER, as City Manager of the City of Beloit, Rock County, Wisconsin; R. H. CALLAND, as City Clerk of the City of Beloit, Rock County, Wisconsin; and STANLEY J. GOLDSCHMIDT, City Sanitarian of the City of Beloit, Rock County, Wisconsin,

Appellees.

MOTION TO DISMISS APPEAL

and

SUPPORTING AFFIDAVITS.

J. ARTHUR MORAN,
Delavan, Wisconsin,
Attorney for Appellees.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

INDEX.

	Page
Motion to dismiss appeal	1
Affidavit of J. Arthur Moran, annexed to motion to dismiss appeal	2
Affidavit of Stanley J. Goldschmidt, City Sanitarian of City of Beloit	5
Certificate of R. H. Calland, City Clerk of Beloit	6
Copy of Ordinance No. 38 of City of Beloit	7
Certificate of R. H. Calland, City Clerk of Beloit.	8
License issued to Lawrence Dyer to sell pasteurized milk in City of Beloit	9

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1947.

No. 275.

LAWRENCE DYER,

Appellant,

vs.

CITY COUNCIL of the City of Beloit, Rock County, Wisconsin; A. D. TELFER, as City Manager of the City of Beloit, Rock County, Wisconsin; R. H. CALLAND, as City Clerk of the City of Beloit, Rock County, Wisconsin; and STANLEY J. GOLDSCHMIDT, City Sanitarian of the City of Beloit, Rock County, Wisconsin,

Appellees.

MOTION TO DISMISS APPEAL.

Come now City Council of the City of Beloit, Rock County, Wisconsin; A. D. Telfer, as City Manager of the City of Beloit, Rock County, Wisconsin; R. H. Calland, as City Clerk of the City of Beloit, Rock County, Wisconsin, and Stanley J. Goldschmidt, City Sanitarian of the City of Beloit, Rock County, Wisconsin, the appellees in the above entitled appeal, and upon the annexed affidavits of J. Arthur Moran and Stanley J. Goldschmidt, move this Court that the appeal herein from the judgment of the Supreme Court of Wisconsin be dismissed, upon the ground that the cause is moot.

Dated December 29, 1947.

J. ARTHUR MORAN,
Counsel for Appellees.

AFFIDAVIT OF J. ARTHUR MORAN, ANNEXED TO MOTION TO DISMISS APPEAL.

In the
SUPREME COURT OF THE UNITED STATES.

October Term, 1947.

No. 275.

Lawrence Dyer, Appellant,

vs.

City Council of the City of Beloit, Rock County, Wisconsin; A. D. Telfer, as City Manager of the City of Beloit, Rock County, Wisconsin; R. H. Calland, as City Clerk of the City of Beloit, Rock County, Wisconsin, and Stanley J. Goldschmidt, City Sanitarian of the City of Beloit, Rock County, Wisconsin, Appellees.

State of Wisconsin } ss.
County of Rock }

J. Arthur Moran, being duly sworn, deposes and says:

That he is an attorney and counselor at law, admitted to practice before this Court, and that he is counsel for the appellees in the above entitled appeal;

That this action was brought by the appellant to compel the appellees to issue to him a license to sell pasteurized milk in the City of Beloit, Rock County, Wisconsin;

That on or about the 29th day of August, 1946, the appellant applied to the said City of Beloit for a license to sell pasteurized milk in said city; that appellant accompanied his application with a statement that he proposed to sell pasteurized milk purchased by him at a pasteuriza-

BLEED THROUGH – POOR COPY

tion plant at Chemung, Illinois, a distance of twenty-five miles from the said City of Beloit; that the City Council of Beloit declined to grant appellant a license because of Section 8.09 (x) (2) of the Ordinances of the City of Beloit, providing as follows:

> "(2) No pasteurized milk shall be sold in the City of Beloit which shall not have been pasteurized in approved plants within six miles from the intersection of State Street and E. Grand Ave., in the City of Beloit."

That thereafter appellant brought this action in the Circuit Court for Rock County, Wisconsin, to compel the appellees to issue the license for which he had applied; that the Circuit Court for Rock County, Wisconsin, on December 20, 1946, dismissed appellant's bill of complaint upon the merits, and entered judgment for the appellees; that on June 10, 1947, upon appeal from said judgment, the Supreme Court of Wisconsin entered judgment affirming the judgment of the lower state court; that on the 30th day of July, 1947, the Supreme Court of Wisconsin entered an order allowing an appeal to this Court;

That after appellant had taken an appeal from the judgment of the Supreme Court of Wisconsin to this Court, and after this Court had, on October 13, 1947, noted probable jurisdiction, the City Council of Beloit, on December 15, 1947, amended Section 8.09 (x) (2) of its Ordinances to read as follows:

> "No pasteurized milk shall be sold in the City of Beloit which shall not have been pasteurized in approved plants within six miles from the intersection of State Street and East Grand Avenue in the City of Beloit; provided, however, that this provision shall not be construed to prohibit the sale within the city

of pure, wholesome, pasteurized milk within the course of interstate commerce, if it affirmatively appears that such milk shall be produced, processed and transported under laws, regulations or ordinances equivalent to the requirements of this ordinance. The health officer shall have the right to satisfy himself that the health officer having jurisdiction over the production, processing and transportation of such milk is properly exercising a regulatory control."

That a certified copy of said amended ordinance, numbered 38, has been filed with the Clerk of this Court, and a true copy thereof is annexed hereto and made a part hereof;

That the appellant, Lawrence Dyer, on December 16, 1947, applied for and received a license to sell pasteurized milk in the City of Beloit, Wisconsin; that a certified copy of said license has been filed with the Clerk of this Court, and a true copy thereof is annexed hereto and made a part hereof;

That because of the enactment of the amended ordinance, as aforesaid, the above entitled suit has become moot;

That this affidavit is made in support of the motion of the appellees to dismiss the appeal herein from the judgment of the Supreme Court of Wisconsin, upon the ground that the cause is moot.

J. Arthur Moran.

Subscribed and sworn to before me this 29th day of December, 1947.

E. J. Caskey,
Notary Public, Rock County, Wisconsin.

(Notarial Seal)

My commission expires April 22, 1951.

BLEED THROUGH – POOR COPY

State of Wisconsin }
County of Rock } ss.

Stanley J. Goldschmidt, being duly sworn on oath deposes and says:

That at all times since the first day of September, 1945, he has been the duly appointed and acting sanitarian of the City of Beloit and in such capacity he has supervision of the issuance of milk licenses by the City of Beloit.

That on the 16th day of December, 1947, Lawrence Dyer, the appellant, in the case of Lawrence Dyer, appellant, vs. City of Beloit, Rock County, Wisconsin, et al., Case #275, now pending on appeal in the Supreme Court of the United States, made application for a license to sell pasteurized milk in the City of Beloit;

That a license was duly issued to him by the said City of Beloit under the date of December 16, 1947, upon payment by the said Lawrence Dyer of the said license fee of Twenty-five ($25.00) Dollars;

That the said Lawrence Dyer, acting under said license, commenced the delivery to and sale in the City of Beloit of pasteurized milk on the 18th day of December, 1947, and since said date has continued and is now selling pasteurized milk in said City of Beloit.

Stanley J. Goldschmidt.

Subscribed and sworn to before me this 29 day of December, 1947.

E. J. Caskey,
Notary Public, Rock County, Wisconsin.

(Notarial Seal)

My commission expires April 22, 1951.

STATE OF WISCONSIN
CITY OF BELOIT
OFFICE OF CITY CLERK

To All to Whom These Presents Shall Come:

I, R. H. Calland, Clerk of the City of Beloit, County of Rock and State of Wisconsin, and keeper of the seal thereof, do hereby certify that the annexed copy of Ordinance Number 38 of the Council of the City of Beloit, County of Rock, State of Wisconsin, has been compared by me with the original enrolled ordinance on file in this office, and that the same is a true copy thereof and of the whole of such ordinance.

I do further certify that said ordinance was published in full on the 17th day of December, 1947, in the Beloit Daily News, a public newspaper published at the City of Beloit, Rock County, Wisconsin, and designated by the Council of the said City of Beloit as the official newspaper for the publication of ordinances passed by said city.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the City of Beloit, Rock County, Wisconsin, at the office of the City Clerk in the said City of Beloit, this 29th day of December, 1947.

R. H. Calland,
City Clerk.

(Seal)

BLEED THROUGH — POOR COPY

ORDINANCE NO. 38.

An Ordinance Amending the Milk Ordinance.

The Council of the City of Beloit do ordain as follows:

Paragraph (2), subsection (x) of section 8.09 of the Code of General Ordinances of the City of Beloit is amended to read as follows:

Section 1:

No pasteurized milk shall be sold in the City of Beloit which shall not have been pasteurized in approved plants within six miles from the intersection of State Street and East Grand Avenue in the City of Beloit; provided, however, that this provision shall not be construed to prohibit the sale within the city of pure, wholesome, pasteurized milk within the course of interstate commerce, if it affirmatively appears that such milk shall be produced, processed and transported under laws, regulations or ordinances equivalent to the requirements of this ordinance. The health officer shall have the right to satisfy himself that the health officer having jurisdiction over the production, processing and transportation of such milk is properly exercising a regulatory control.

Section 2:

This ordinance shall take effect upon passage and publication.

Ordained and enacted this 15th day of December, 1947.

John T. Wooton,
President of the Council.

Attest:

R. H. Calland,
City Clerk.

Published this 17 day of December, 1947.

STATE OF WISCONSIN
CITY OF BELOIT
OFFICE OF CITY CLERK

To All to Whom These Presents Shall Come:

I, R. H. Calland, Clerk of the City of Beloit, County of Rock and State of Wisconsin, and keeper of the seal thereof, do hereby certify that the annexed copy of License No. 532 is a true copy of the license issued to the appellant, Lawrence Dyer, to sell pasteurized milk in the City of Beloit, Rock County, Wisconsin.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the City of Beloit, Rock County, Wisconsin, at the office of the City Clerk in the said City of Beloit, this 29th day of December, 1947.

R. H. Calland,
City Clerk.

(Seal)

Non-Transferable

ORIGINAL Tag #47

CITY OF BELOIT
STATE OF WISCONSIN

No. 532

Lawrence Dyer

having paid to the City of Beloit, the sum of
Twenty Five.....Dollars, $25.00

Is Hereby Granted a

License

To: operate a dairy (to peddle Dean's Milk in Beloit)

At (Address): Poplar Grove, Illinois

Within this City, subject to the ordinances thereof and to the laws of this State.

Unless previously relinquished or revoked.

This License
expires (date): June 30, 1948

Application
approved by J. C. Springberg, M. D.

Witness my hand this 16 day of December, 1947.

R. H. Calland, City Clerk.
P. J.

Post This License